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Anna A. Bradshaw

ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:)	MM DOCKET No.: 96-169
)	
CHESTER BROADCASTING COMPANY, INC.)	File No.: BR-950726YG
)	
For Renewal of License for)	
Station WGCD (AM))	
Chester, South Carolina)	

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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CHESTER BROADCASTING COMPANY,)	File No.: BR-950726YG
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For Renewal of License for)	
Station WGCD(AM))	
Chester, South Carolina)	

Suite 201
FCC Building
2000 L Street, N.W.
Washington, D.C.

Tuesday,
September 17, 1996

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: HON. JOHN M. FRYSIK
Administrative Law Judge

APPEARANCES:

On behalf of Name of Licensee:

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On Behalf of Name of FCC:

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WASHINGTON, D.C.

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
None.					

Hearing Began: 9:00 a.m.

Hearing Ended: 9:20 a.m.

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1 P R O C E E D I N G S

2 JUDGE FRYSIAK: On the record. Good morning,
3 everyone.

4 MR. ZAUNER: Good morning.

5 MR. ALPERT: Good morning.

6 JUDGE FRYSIAK: This is a prehearing conference
7 for Chester, South Carolina, and may we note your
8 appearances on the record?

9 MR. ZAUNER: For the Mass Media -- do you want to
10 go first, Dan?

11 MR. ALPERT: For Chester Broadcasting Company,
12 Inc., Dan Alpert, Law Offices of Dan J. Alpert.

13 MR. ZAUNER: For the Mass Media Bureau, Robert A.
14 Zauner, and with me this morning is Sharon Donahue who is a
15 clerk in our office, and who has taken the bar and is
16 waiting the results.

17 JUDGE FRYSIAK: Well, what do we have here today?

18 MR. ALPERT: Well, Your Honor, I have only
19 recently begun representing this station, but they have been
20 off the air. They had permission to be off the air for a
21 period of time. They have maintained their equipment. They
22 thought that they would be entitled to a renewal ultimately.
23 They were surprised that this was designated for hearing.

24 They have had a number of plans in the works to
25 get the station back on the air. They do plan to get the

1 station back on the air, and it's my expectation that within
2 a timely period of time, we will be able to move for summary
3 decision on the matter, to hopefully resolve this and allow
4 the station to have its renewal granted.

5 MR. ZAUNER: Your Honor, I wonder if any
6 modification applications would have to be filed in
7 connection with putting the station back on the air.

8 MR. ALPERT: It is my understanding they will not
9 because their site still exists. They own their site.
10 Their equipment is maintained, and they intend to go on the
11 air at their current location.

12 MR. ZAUNER: Your Honor, I would just state as is
13 stated in the hearing designation order, WGCD-AM suspended
14 its operations in July, on July 31st, 1993, so this station
15 has been silent now for over three years.

16 They promised back in I guess it was '93 that they
17 would either sell the station, or if they weren't successful
18 in finding a buyer, that they would turn in their license by
19 June 30th, 1994. The efforts to find a buyer were
20 unsuccessful, and they didn't turn in their license either.

21 Also from the hearing designation order, it
22 appears that this station's last authorization to remain
23 silent expired on March 11th, 1996, so it has now been
24 silent without authority for some, I guess close to six
25 months.

1 This is a track record that does not speak well
2 for this particular licensee, and the Bureau is going to be
3 very concerned not only with whether or not this station
4 returns to the air, but whether this station has the where-
5 with-all, or whether the licensee has the where-with-all to
6 keep this station on the air for any sustained period of
7 time.

8 We don't believe the issue is met by simply
9 throwing a switch one day, and as soon as you get the
10 license renewed, throwing the switch the other direction the
11 next day, and given this licensee's past record, we're very
12 concerned with this licensee's representations that it will
13 return to the air in a meaningful way.

14 JUDGE FRYSIAK: Well, will the applicant not sell
15 anymore, is that it?

16 MR. ALPERT: There is a possibility that the
17 station -- well, we can't sell literally until after the
18 renewal application is dealt with. That's Commission
19 policy. It is the licensee that is going to be the
20 applicant before you at all times.

21 So as far as whether there is going to be an
22 option to sell after the renewal is granted, that's one
23 option that's being looked into with a couple of different
24 parties. The expectation would be, though, that the station
25 would be on the air with its current licensee at the

1 appropriate time.

2 And as far as another comment that Mr. Zauner
3 made, you know, based upon conversations I have had with his
4 office previously, it was my understanding that we would
5 have to make some sort of showing of the ability to stay on
6 the air, not only be on the air, as he put it, for a given
7 day, that it would be preferential to make a showing that we
8 would have the ability to be on the air for a sustained
9 period of time so that the Commission could have its
10 concerns alleviated, and that is our intention, and that's
11 something which I have stressed to my client.

12 JUDGE FRYSIAK: Mr. Zauner, if they turn the
13 switch before the hearing date, what is, what would be the
14 Bureau's position?

15 MR. ZAUNER: Well, the Bureau's position is that
16 we are concerned that they are able to sustain broadcast
17 operations, that this isn't just a gimmick to get them past
18 the renewal problem, and as soon as they've got their
19 renewal in hand, they go back off the air, and we're stuck
20 with another silent station for another year.

21 So we would want evidence, and also in light of
22 the past lack of diligence in returning the station to the
23 air, we don't have, you know, a great deal of confidence in
24 their representations that they will be able to stay on the
25 air.

1 In communications to the Commission, they have
2 admitted that they have a lack of knowledge, and I am
3 quoting them, for the radio business, and apparently what
4 happened was in 1993 when the general manager of the station
5 resigned, the station went off the air. The licensees were
6 unable to sustain broadcast operations without someone who
7 is capable of operating the station.

8 We find it a little perhaps even disingenuous now
9 to come in at the last minute when they are under the gun
10 and say oh, we can put the station back on the air, and we
11 can operate it after the record that they've made so far.

12 JUDGE FRYSIAK: So what? We proceed towards
13 hearing, is that it?

14 MR. ZAUNER: I think we have to proceed towards
15 hearing. If Mr. Alpert's client wants to file a motion for
16 summary decision, that would certainly be something that we
17 would, I'm sure, look at.

18 JUDGE FRYSIAK: All right. Well, the hearing has
19 been scheduled for December 17th.

20 MR. ALPERT: I understand that.

21 JUDGE FRYSIAK: Do you have any trouble with that?

22 MR. ALPERT: I would prefer to move it to January,
23 after the holidays, but I can live with December, if
24 necessary.

25 JUDGE FRYSIAK: All right.

1 MR. ZAUNER: I would prefer to move it to January
2 also, Your Honor. Right now, I have vacation plans in
3 December, but if we're going to file a motion for summary
4 decision, there's a good chance that may end up by being
5 dispositive one way or the other of this proceeding.

6 In fact, most of the silent station cases that I
7 know of have been resolved by motion for summary decision
8 prior to hearing. There are only two that I know of, that I
9 can think of offhand that have actually gone to hearing.

10 JUDGE FRYSIK: Well, it doesn't matter to me, of
11 course, one way or the other. We have to be prepared for
12 either eventuality, but would the first week in January, if
13 we were to go to hearing, would that be acceptable, Mr.
14 Alpert?

15 MR. ALPERT: That's fine with me.

16 JUDGE FRYSIK: The first week in January. I will
17 make it ---

18 MR. ALPERT: It would be nice to have a couple of
19 days of buffer between New Year's Day and the actual date,
20 that's fine.

21 JUDGE FRYSIK: All right, January 6th then. Then
22 the hearing will be, the exhibits would have to be filed, I
23 will make it December 17th, and witness notification would
24 be then January 31st, or rather December 31st.

25 Mr. Alpert, what kind of a motion for summary

1 disposition would you file? What would be the grounds for
2 it?

3 MR. ALPERT: It would be based upon the
4 circumstances. I mean, I think there are basically two
5 issues that are in the case -- one is to what extent the
6 period of time, if any, that we have been off the air has
7 been in violation of 73.1740 of the rules, and to what
8 extent there ever was an intention to be off the air
9 permanently which would have put us in violation of 73.1750
10 of the rules.

11 So I think that as far as, to the extent I know
12 for a fact, from my client, that there never was an
13 intention to be permanently off the air, I would say, from
14 affidavits and that sort of thing. We can dispose of the
15 second issue.

16 As far as the first issue goes, the question is
17 whether, from a legal standpoint, whether or not the rule
18 violation would be disqualifying, and then if sufficient
19 showing has been made to the staff, I would hope that not
20 only are we on the air, but that we have a sufficient means
21 to remain on the air. I would hope that the issue
22 concerning the renewal of the station can be resolved.

23 One thing that is unusual with these cases I think
24 in general right now is that, to the extent that licensees
25 in general have the ability, or will have their license

1 automatically discontinued as of, I believe, February 12th
2 of the new legislation that was enacted last year by
3 Congress, then ---

4 JUDGE FRYSIAK: Yes.

5 MR. ALPERT: I mean, that's an automatic thing.
6 The Commission has even said they have no means by which to
7 waive it. What's interesting though is that with that
8 situation, when stations are on the air for one day and
9 report to the Commission that they went back on the air for
10 one day, the situation Mr. Zauner was talking about, those
11 stations which aren't subject to a renewal right now, I
12 believe are then given another one year period within which
13 to remain automatically off the air.

14 Now, whether or not the Commission will be
15 policing that in some other way such as these hearings, I
16 have no idea, but it is kind of ironic that it has become a
17 double standard, I suppose, as far as the amount of scrutiny
18 that is going to be placed under the stations that are
19 already off the air, versus the stations that will be off
20 the air in the future.

21 I would hope that there is some sort of
22 consideration of that, of the new legislation also within
23 any sort of motion for summary decision, as far as weighing
24 the merits and equities, for example.

25 JUDGE FRYSIAK: Yes, but none of that has any

1 bearing on a summary disposition action, does it? Double
2 standards?

3 MR. ALPERT: Probably not, probably not. I mean,
4 I have to research it, but probably not, but I would hope if
5 the station is on the air, and if we have the means to show
6 that we can reliably, that the Commission could reliably
7 predict that we will remain on the air, the people that
8 we're talking to are experienced broadcasters with other
9 stations that would have the resources to keep the station
10 on the air very much in place, and the public interest would
11 be to renew the license, and to allow the station to remain
12 on the air and serve the public.

13 JUDGE FRYSIK: All right, anything else?

14 MR. ZAUNER: The only other thing that I would say
15 is that it seems to me that the facts that Mr. Alpert was
16 talking about are things that could be done or developed
17 rather expeditiously, and I think it would be in everyone's
18 interest, if he was going to file a motion for summary
19 decision, that he do so, you know, as soon as possible.

20 MR. ALPERT: Absolutely.

21 MR. ZAUNER: So that we're not down to a hearing
22 date exchanging exhibits and that sort of thing, or
23 preparing exhibits, and then in comes motion for summary
24 decision which would moot the work that we've done.

25 JUDGE FRYSIK: Isn't it essential for you to get

1 the station on the air before you file?

2 MR. ALPERT: Oh, absolutely, and one matter I was
3 going to address with Mr. Zauner afterwards, which is really
4 just a little bit of a chicken and egg problem, which is a
5 problem but hopefully this can be worked out, is that the
6 problem we're going to have, especially in light of some of
7 the comments Mr. Zauner made today, was the fact that if
8 there's a real threat that even if the station is on the
9 air, that there's going to be some sort of opposition to a
10 grant of summary decision or renewal.

11 That becomes similar to the situation with like
12 307's with extensions of time of construction permits. It's
13 illogical -- the Commission has recognized that it is
14 illogical for people to put a lot of money into building a
15 station if the Commission is not going to renew the
16 construction permit, and is going to yank the entire
17 operation.

18 So the trick is going to be to enable potential
19 investors and potential buyers of the station, whatever, to
20 have enough confidence that their money is being well-spent
21 in getting the station on the air, because the station is
22 likely to be renewed, and have that confidence so that they
23 know that they are not just throwing money down a tube, and
24 that's a challenge.

25 JUDGE FRYSIAK: That's true, but the quandary is

1 only of the applicant's making.

2 MR. ALPERT: Sure, absolutely.

3 MR. ZAUNER: And Your Honor, of course, without
4 seeing the motion for summary decision, the Bureau can't
5 state whether it's going to support or not support it. I
6 will tell you, however, that the Bureau has been taking a
7 very hard line in connection with these silent station
8 cases.

9 JUDGE FRYSIAK: Yes. It looks like a Catch-22,
10 but who is responsible for it?

11 MR. ALPERT: Oh, absolutely, and all I'm hoping
12 for is that if, on an informal basis, I contact Mr. Zauner's
13 office and I give him a set of facts to find out whether or
14 not he believes he could support, or would definitely
15 oppose, that he could be candid and open with me so I can
16 communicate appropriately to my client, so I could let them
17 know whether it's worthwhile to pursue a certain course of
18 action or not, and I am hoping that he will be available for
19 that.

20 JUDGE FRYSIAK: Good luck.

21 MR. ALPERT: There's nothing binding, of course.

22 JUDGE FRYSIAK: Good luck. All right, if there is
23 nothing else, then we stand adjourned until our hearing date
24 which is January 6th.

25 MR. ALPERT: Thank you.

1 MR. ZAUNER: Thank you.

2 (Whereupon, at 9:20 a.m., the prehearing
3 conference was adjourned.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-149
CASE TITLE: Chester Braodcasting
HEARING DATE: September 17, 1996
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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9-17-96

Shelley B. Heller

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